

IN THE SUPREME COURT OF THE STATE OF DELAWARE

INTEL CORPORATION,	§
	§ No. 536, 2011
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for New Castle County
AMERICAN GUARANTEE &	§ C.A. No. 09C-01-170
LIABILITY INSURANCE	§
COMPANY, LUMBERMENS	§
MUTUAL CASUALTY	§
COMPANY, LIBERTY MUTUAL	§
INSURANCE COMPANY and	§
MARKEL AMERICAN	§
INSURANCE COMPANY,	§
	§
Plaintiff and Defendants	§
Below-Appellees.	§

Submitted: October 31, 2011
Decided: November 4, 2011

Before **HOLLAND, BERGER** and **JACOBS**, Justices

ORDER

This 4th day of November 2011, it appears to the Court that:

(1) The defendant-appellant, Intel Corporation, filed an appeal from the Superior Court’s July 29, 2010 order in this insurance coverage case following the entry of the Superior Court’s purportedly “final” order on September 7, 2011. For the reasons that follow, we conclude that this appeal

must be dismissed for the appellant's failure to comply with Supreme Court Rule 42 when filing an appeal from an apparent interlocutory order.

(2) The record before us reflects that, following the filing of Intel's notice of appeal, the Clerk of the Court issued a notice directing Intel to show cause why its appeal should not be dismissed for its failure to comply with Rule 42 when taking an appeal from an apparent interlocutory order. On October 21, 2011, Intel filed its response to the notice to show cause.

(3) In its response, Intel states that the Superior Court's September 7, 2011 order did not explicitly state that it was the Superior Court's final judgment in the matter. Neither was the order entered as a final judgment pursuant to Superior Court Civil Rule 54(b). Intel further states that it is "uncertain" whether the Superior Court's order constitutes a final judgment. Finally, Intel notes that its motion for stay pending resolution of litigation in the Ninth Circuit Court of Appeals remains pending before the Superior Court.

(4) On October 31, 2011, appellees American Guarantee, Lumbermens and Markel filed their replies to Intel's response to the notice to show cause.¹ All three appellees take the position that the Superior Court's September 7, 2011 order resolved all issues before the Superior

¹ Appellee Liberty Mutual did not file a reply.

Court and that, therefore, the appeal should proceed. However, American Guarantee confirms that Intel's motion for stay pending resolution of litigation in the Ninth Circuit Court of Appeals remains pending before the Superior Court.

(5) Absent compliance with Rule 42, this Court's jurisdiction is limited to the review of final judgments of trial courts.² An order is deemed to be "final" if the trial court has clearly declared its intention that the order be the court's "final act" in the case.³ An appeal to this Court from an apparent interlocutory order is premature absent compliance with Rule 42.

(6) Intel concedes that the Superior Court has not clearly declared its intention that its September 7, 2011 order is its final act in this case. Moreover, Intel's motion for stay---a motion that is, at the very least, relevant to the instant appeal---remains pending before the Superior Court.⁴ Therefore, in the absence of compliance with Rule 42, we conclude that this appeal must be dismissed.

² *Julian v. State*, 440 A.2d 990, 991 (Del. 1982).

³ *J.I. Kislak Mortgage Corp. v. William Matthews, Builder, Inc.*, 303 A.2d 648, 650 (Del. 1973).

⁴ Intel has filed a motion requesting the same relief in this Court.

NOW, THEREFORE, IT IS ORDERED, pursuant to Supreme Court Rule 29(b), that this appeal is DISMISSED.⁵

BY THE COURT:

/s/ Carolyn Berger
Justice

⁵ Intel's motions to stay and to amend its notice of appeal, currently pending in this Court, are hereby denied as moot.